

DETAILED ACTION

Election/Restrictions

1. Claims 7, 15 and 21 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 7 and 15 are directed to the non-elected species as indicated by the Applicant in the response dated 9/16/2008, and claim 21 includes structure not disclosed in the specification or the drawings directed to the elected species.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 7, 15 and 21 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Schroeder, JR. et al. (Schroeder, US 4,300,612).

Regarding claim 18, Schroeder discloses a container (referring to figure 1) comprising: a body (combination of upper section 1 and lower section 20) having at least a partially hollow

interior (illustrated in figure 1), wherein the body has a lower section (bottom portion 20) and an upper section (top portion 1) and wherein the lower section includes a bottom surface (bottom surface of bottom portion 20) for supporting the device in a standing position (illustrated in figure 1) and wherein the upper and lower sections are absent any openings that would permit the passage of fluid out of the partially hollow interior when the upper and lower sections are joined together [as illustrated in figure 1, when top portion 1 and bottom portion 20 are joined together via threaded section 21 and when a cap is screwed onto uppermost part 5 as described in column 3, lines 53-56, the container will be completely closed]; a mouth (the portion interior of threaded portion 21) formed in the lower section of the body (illustrated in figure 1), and providing access to the hollow interior of the body (illustrated in figure 1), wherein the mouth defines a first opening to the hollow interior of the body when the upper section is disengaged from the lower section (illustrated in figure 1), and wherein the mouth is positioned such that as the hollow interior of the lower section is filled with fluid (illustrated in figure 1), fluid will initially remain below the upper section when the upper section is engaged with the lower section (the container is capable of performing this functional limitation), and wherein the mouth has an upper edge (top portion of threaded portion 21) bounding the first opening (illustrated in figure 1) and the upper section has a lower edge (bottom portion of threaded portion 2) bounding a second opening (interior portion of threaded portion 2) and wherein the first opening and the second opening are of substantially the same diameter (illustrated in figure 1); and a handle (6) formed in the upper section of the body (illustrated in figure 1), wherein the handle has a generally upright orientation defined orthogonal to the bottom surface of the lower section (illustrated in figure 1).

Regarding claim 19, the functional limitation “wherein during use the lower section of the body is submerged in the warm material and the upper section, including the handle, are in a raised position relative to the warm material so that the handle may be grasped by a hand without the hand contacting the warm material” is capable of being performed, and provides no patentable distinction from the prior art.

Regarding claim 20, Taylor discloses that the mouth is defined along a plane (a horizontal plane) that is parallel to that of the bottom surface of the lower section (illustrated in figure 8).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor.

Regarding claim 1, Taylor discloses a device (referring to figures 1-3) comprising: a body (12) having a base (32) extending along a first horizontal plane (illustrated in figure 2), a wall (22) extending upwardly along a vertical plane from the base (illustrated in figure 2), a top (36) extending along a second horizontal plane (illustrated in figure 2) connected to the wall above the base (illustrated in figure 2), wherein the base, wall and top define a hollow interior (illustrated in figure 3); a mouth (34 & 40) disposed on the top of the body and providing access to the hollow interior (illustrated in figure 2), wherein an opening of the mouth (the interior of the mouth) defines a third horizontal plane (illustrated in figure 2) that is parallel to the first and second horizontal planes (illustrated in figure 2), and wherein the opening defines a maximum fill level (inherent); a cover (14) coupled to the mouth (illustrated in figure 3: indirectly coupled) having a hollow interior defining an expansion volume (the interior of the cover would define an expansion volume) that is fluidly connected to the hollow interior of the body when the cover is engaged with the mouth (illustrated in figure 2), wherein the expansion volume would not be filled with liquid when the hollow interior is filled to the maximum level (Taylor's device is capable of performing this intended use function), and when liquid only may be removed from the hollow interior of the body when the cover is disengaged from the mouth (illustrated in figure 2). It is noted that the intended use limitation "adapted to close the mouth" is capable of being performed, and provides no patentable distinction from the prior art. However, Taylor fails to disclose a series of sidewalls. The general concept of designing the sidewalls of a liquid container to be square or rectangular falls within the realm of common knowledge as obvious mechanical expedient, and one having ordinary skill in the art would have been motivated to

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include the use of a series of vertical sidewalls in order to prevent the container from rolling if placed on it's side.

Regarding claim 2, Taylor discloses that the device cannot be overfilled (see the rejection of claim 1 regarding the expansion volume).

Regarding claim 3, Taylor discloses that the mouth is sized to accommodate ice cubes (this functional limitation is capable of being performed, and provides no patentable distinction from the prior art.)

Regarding claim 6, Taylor discloses a hanger (upper portion of element 14).

7. Claims 8-10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al. (Taylor, GB 2,098,958) in view of Churan (US 3,804,289).

Regarding claim 8, Taylor discloses a device (referring to figures 1-3) comprising: a body (12) having a base (32), a top (36), wherein the body defines a hollow interior (illustrated in figure 3); a mouth (34 & 40) disposed on the top of the body and providing access to the hollow interior (illustrated in figure 2), wherein the mouth defines an opening (the interior of the mouth), and wherein the opening defines a maximum fill level (inherent); a cover (14) having a hollow interior defining an expansion volume (the interior of the cover would define an expansion volume) that is fluidly connected to the hollow interior of the body when the cover is engaged with the mouth (illustrated in figure 2), and when liquid only may be removed from the hollow interior of the body when the cover is disengaged from the mouth (illustrated in figure 2); and wherein the hollow area of the cover is at least 10% larger in total volume than that of the hollow interior of body (illustrated in figure 2). It is noted that this device is capable of being

filled with a liquid and placed in a freezing device. It is noted that the intended use or functional limitations "shaped to provide an enlarged surface area" and "to provide for expansion of liquid from within the body through the mouth and into the hollow area of the cover when said body is filled with a cooling substance and then frozen or otherwise exposed to an environment that causes the cooling substance with which said body is filled to expand" are capable of being performed, and provides no patentable distinction from the prior art. However, Taylor fails to disclose that the cover includes a gasket. The general concept of providing a gasket for a cover for a container falls within the realm of common knowledge as obvious mechanical expedient and is illustrated by Churan (column 4, lines 38-43) which teaches a gasket (30) that is disposed between a cover (11) and a container (10), and one having ordinary skill in the art would have been motivated to include the use of a gasket in order to prevent fluid within the device from leaking out of the device.

Regarding claim 9, Taylor discloses that the device cannot be overfilled (see the rejection of claim 8 regarding the expansion volume).

Regarding claim 10, Taylor discloses that the mouth is sized to accommodate ice cubes (this functional limitation is capable of being performed, and provides no patentable distinction from the prior art.)

Regarding claims 13 & 14, Taylor discloses a hanger (upper portion of cover 14) being part of the cover (illustrated in figure 2).

Response to Arguments

8. Applicant's arguments, see page 8, filed 6/29/2011, with respect to the rejection(s) of claim(s) 18-21 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Schroeder.

9. Applicant's arguments filed 6/29/2011 pertaining to the rejections of claims 1-3, 6, 8-10, 13 & 14 have been fully considered but they are not persuasive.

On pages 10-12 of the applicant's remarks, the applicant presents the following arguments pertaining to the rejection of claims 1-3, 6, 8-10, 13 & 14:

(a) Applicant submits that the Examiner has failed to establish any basis for considering the valve cap 14 and the storage cap 30 as a single structure. The reference does not show the two caps as being integrally formed with or otherwise connected to one another. As noted above, for the bottle of Taylor et al. to work as intended, the storage cap 30 must be removable from the bottle 12 without removing the valve cap 14. Moreover, it is the valve cap 14 that seals the bottle 12. The storage cap 30 does not perform this function and one of skill in the art would not expect it to so function given the device's design. Indeed, without the benefit of hindsight reconstruction, it strains credulity to suggest that one skilled in the art would take a liquid soap dispenser consistent with that described in the reference and modify it to create a chilling device having a cap with an integral expansion volume.

(b) For the construction proposed by the Examiner to work, significant changes would need to be made to the dispenser described by Taylor et al. For instance, Taylor et al. teaches that when the dispenser is in use, the storage cap is attached to the bottom of the bottle. If the valve

cap were coupled to the storage cap, moving the storage cap to the in-use position would leave the opening of the bottle exposed and when the bottle is hung using the hanger of the storage cap, fluid would flow freely out of the bottle. Moreover, there is no recess or any other structure to permit the valve cap and the storage cap to be paired together such that the storage cap can be snap-fit onto the bottle. In short, there is no support in the reference whatsoever to support the position that the storage cap and the valve cap are, or could be, a single structure.

(c) In response to Applicant's arguments, the Examiner now contends that the storage cap of Taylor et al. is considered to anticipate the claimed cover, "not the combination of valve cap 30 and storage cap 14." That is, the Examiner has now asserted that one skilled in the art would have removed and discarded the valve cap of the bottle explicitly disclosed by Taylor et al. and used the resulting structure (namely; planar base 32 and a frustoconical top 40) as a fluid containment device. This interpretation of Taylor et al. ignores that Taylor et al. explicitly teaches the storage cap as a device that is to be removed and snapped onto the opposite end of the planar base so that the bottle can be hung, such as on a shower head or shower curtain rod. So while the storage cap is capable of fitting on either end of the base, the storage cap is not disclosed as "closing the device of Taylor" and there is nothing to suggest that it would provide the fluid tight seal necessary in the claimed invention. The valve-cap is described as closing the device. The storage cap provides protective cover for the valve cap during shipping but during use, the storage cap is removed and affixed to the opposite end of the base, which enables the bottle to be hung upside-down from a shower curtain rod, for example. One skilled in the art would thus appreciate that removing the valve cap would result in a non-functioning liquid container. That is, the liquid, e.g., shampoo or soap, would pour out of the container when the

container was used as intended, i.e., hung upside down. Clearly then, the valve cap is an integral component of the bottle described by Taylor et al. and one skilled in the art would appreciate as much and would not, without hindsight, modify it to create Applicant's claimed invention.

(d) Additionally, the Examiner has not provided any rationale or factual support thereof as to why one skilled in the art would have found it beneficial or necessary to modify the soap bottle described by Taylor et al. and then use such a modified bottle as a chilling device. As described previously, the valve cap is an integral component of the Taylor et al. bottle and without it the bottle would not function properly. Moreover, the Examiner has not established that if one skilled in the art were motivated to use the soap bottle disclosed by Taylor et al., he would have modified the bottle to remove the valve cap. There has been no disclosure in the art of record that the valve capped-bottle disclosed by Taylor et al. could not be used as-is for chilling or, on the flip side, that it could or would be used as a chilling utensil in any form.

(e) Accordingly, Applicant respectfully submits that rejection of the claimed invention under 35 U.S.C. § 103(a) is improper because the Examiner has not made a proper showing that the factual inquiries of Graham have been made.

In response to arguments (a) & (b), the Examiner respectfully disagrees. In the previous office action, the Examiner has interpreted the claimed cover to be storage cap 14 of Taylor, not the combination of valve cap 30 and storage cap 14. Storage cap 14 is capable of sealing the interior of container 12 with valve cap 30 open or removed. Also, valve cap 30 can be left open or left removed by a user, thus showing that container 12 is capable of being used without valve cap 30. Also, hindsight reconstruction has not been employed by the Examiner since Taylor discloses all of the structural limitations of independent claims 1 & 8, except for a series of

sidewalls and the cover including a gasket. In addition, the Examiner has shown that no changes would have to be made to container 12 of Taylor to read on the claimed invention.

In response to arguments (c) & (d), the Examiner respectfully disagrees. As described in the Examiner's response to arguments (a) & (b), storage cap 14 is capable of sealing the interior of container 12 with valve cap 30 open or removed. Also, valve cap 30 can be left open or left removed by a user, thus showing that container 12 is capable of being used without valve cap 30. In addition, the Examiner has shown that no changes would have to be made to container 12 of Taylor to read on the claimed invention. Nothing in claims 1 & 8 recite a fluid tight seal between the cover and the mouth. Storage cover 14 is capable of providing a fluid tight seal. Although, the intended purpose of container 12 of Taylor is disclosed to be for soap or shampoo, nothing prevents a user from using the container of Taylor for holding a cooling medium since the structure of container 12 is capable of holding a cooling medium. Also, hindsight reconstruction has not been employed by the Examiner since Taylor discloses all of the structural limitations of independent claims 1 & 8, except for a series of sidewalls and the cover including a gasket.

In response to argument (e), the Examiner respectfully submits that the limitations of claims 1-3, 6, 8-10, 13 & 14 have been taught or disclosed by Taylor and the combination of Taylor and Churan.

In conclusion, for at least the reasons stated above, the Examiner respectfully submits that the rejections of the rejected claims are properly upheld.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AZIM RAHIM whose telephone number is (571) 270-1998. The examiner can normally be reached on Monday - Thursday 7am - 3pm EST and Friday 7am - 9:30am EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Jules can be reached on 571-272-6681. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 3744
9/28/2011

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